

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**February 24, 2023**

**Christopher M. Wolpert**  
**Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOUGLAS D. SMITH,

Defendant - Appellant.

No. 22-2142  
(D.C. No. 1:18-CR-03495-JCH-1)  
(D. N.M.)

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**ORDER**

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This matter is before the court *sua sponte* to address whether the materials that comprise Volumes 2 through 5 of the record on appeal should remain under seal. This court takes seriously the question of whether sealing is warranted in any particular case, even when the documents at issue were filed under seal in the district court. “A party seeking to file court records under seal must overcome a presumption, long supported by courts, that the public has a common-law right of access to judicial records.... To do so, the parties must articulate a real and substantial interest that justifies depriving the public of access to the records that inform our decision-making process.” *Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135-36 (10th Cir. 2011) (quotation marks and citations omitted).

Within 14 days of the date of this order, any party who seeks the continued sealing of any of the materials that comprise Volumes 2 through 5 of the record on appeal shall file a response to this order. Any such response shall set forth in detail (1) the basis for the requested sealing, with reference to the specific nature of the material sought to be protected from public disclosure; (2) the legal basis for depriving the public of access to the materials at issue, with reference to this court's precedent; and (3) the reasons why redaction is not practicable means of providing public access to as much of the record material as possible. Any party who does not file a timely response to this order will be deemed to acquiesce in the unsealing of Volumes 2 through 5 of the record on appeal.

Entered for the Court,

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk